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JUNG-CHUN TSENG
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JUL 22 2008

In re Application of :
Jung-Chun Tseng :
Application No. 10/042,328 : ON PETITION
Filed: January 11, 2002 :
Title: Transmission for a Swing :
Exerciser :

This is a decision on "PETITION TO REINSTATE APPLICATION DUE TO FAILURE TO RECEIVE NOTICE OF ALLOWANCE AND FEE(S) DUE", filed April 9, 2007, which is being treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181.

The petition under 37 CFR 1.181 is DISMISSED.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181". Extensions of time under 37 CFR 1.136(a) are permitted. No fee is required for a renewed petition.

The above-identified application became abandoned for failure to timely pay the issue fee in response to the Notice of Allowance, mailed July 1, 2003. This Notice set a statutory period for reply of three months. No issue fee having been received, the application became abandoned on October 2, 2003. A Notice of Abandonment was mailed on November 12, 2003. Applicant filed the

instant petition on April 9, 2007, asserting that he never received the Notice of Allowance.

37 CFR 1.181(f) states that any petition not filed within two months of the notice for which relief is requested may be dismissed as untimely. Here, the Office mailed a Notice of Abandonment on November 12, 2003. Applicant did not file the instant petition until April 9, 2007, nearly three and a half years later, with no explanation as to why the petition was not timely filed. Accordingly, at this time it is appropriate to dismiss the instant petition as untimely.

Petitioner is not precluded from obtaining relief by filing a petition pursuant to 37 CFR 1.137(b) on the basis of unintentional delay. A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by (1) The reply required to the outstanding Office action or notice, unless previously filed; (2) The petition fee as set forth in 37 CFR 1.17(m), currently \$770 for a small entity; and (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
 Commissioner for Patents
 P.O. Box 1450
 Alexandria VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.



Cliff Congo
Petitions Attorney
Office of Petitions

Enc: PTO/SB/64 (3 pages)